BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

NANCY L. KRAMER	)	
Claimant	)	
V.	)	
	)	
REHABCARE GROUP	)	
Respondent	)	Docket No. 1,071,608
	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) appealed the February 3, 2016, Award entered by Administrative Law Judge (ALJ) Rebecca A. Sanders. The Board heard oral argument on June 2, 2016.

APPEARANCES

Jeff K. Cooper of Topeka, Kansas, appeared for claimant. Kendra M. Oakes of Kansas City, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. At oral argument, the parties agreed the Board may consider the *Guides*[1] when making its decision.

[1] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

ISSUES

ALJ Sanders awarded claimant permanent partial disability benefits based upon a 19 percent whole body functional impairment. The ALJ also awarded claimant future medical treatment upon proper application.

Respondent contends claimant sustained a 14 percent whole body functional impairment and claimant failed to prove she will require future medical treatment. Respondent requests the Board modify the Award accordingly.

Claimant requests the Board affirm the Award.

The issues are:

1. What is the nature and extent of claimant's disability?

2. Is claimant entitled to future medical treatment?

FINDINGS OF FACT

Claimant injured her left shoulder and neck on May 30, 2011, while assisting a patient to stand. On January 30, 2012, Dr. Daniel Hinkin manipulated claimant's shoulder under anesthesia and administered steroid injections in an attempt to relieve her adhesive capsulitis. On April 3, 2012, Dr. Hinkin repeated the manipulation under anesthesia and performed a diagnostic arthroscopy, capsular release and mini open rotator cuff repair.

Claimant testified she was given injections in her neck and shoulder by Dr. Steven Peloquin. She testified she was later given a trigger point injection by Dr. Joseph G. Sankoorikal and he referred her to Dr. Peloquin, who gave her two additional injections. Claimant felt the injections administered by Dr. Peloquin were beneficial and she would like to have them authorized again. The Board incorporates by reference the detailed description in the Award of the accident and treatment provided by Drs. Hinkin and Peloquin.

Claimant testified she still has neck pain, difficulty turning her neck to the right and looking up. She has a constant ache in her left shoulder, mainly on the top, as well as loss of strength and some loss of range of motion. She cannot sleep on her left side and has adjusted how she performs her job. Claimant tries to get assistance when lifting patients who are not able to lift themselves.

At respondent's request, Dr. Sankoorikal evaluated claimant on March 6, 2014. The doctor diagnosed claimant with a left shoulder high-grade partial thickness intraarticular surface tear, left shoulder adhesive capsulitis and myofascial pain syndrome involving the

left upper trapezius. According to the doctor, claimant had decreased left shoulder range of motion, normal reflexes and overall strength and sensation to touch and pinprick were normal. He noted claimant's grip strength was not up to par and her neck range of motion was normal.

Utilizing the *Guides*, Dr. Sankoorikal opined claimant had a 19 percent left upper extremity functional impairment – 10 percent for shoulder arthroscopic surgery and residual pain and 9 percent for range of motion deficits. He also assigned claimant a 3 percent whole body functional impairment for myofascial pain involving the left upper trapezius. Using the Combined Values Chart, the doctor determined claimant had a 14 percent whole body functional impairment.

Dr. Sankoorikal saw claimant several times in 2015 and provided her with trigger point injections. When asked whether within a reasonable degree of medical certainty, if more probable than not, claimant would need future medical treatment, Dr. Sankoorikal testified:

> As I mentioned, you cannot say in a prediction here how things are going because these two conditions, if you don't work on it from her standpoint, very easily that can get tightened up very quickly and then we might end up in the doctor's office for some intervention. So the responsibility lies quite a bit on her side and I think she understood what we need to do.
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> Same thing with her shoulder. If you don't use it, if you don't keep on doing the range of motion, as best as she could and she should, again that can limit your range of motion. And then functionally that will impair, which in turn also impair the myofascial pain, because as you know, the trapezius and the rest of the muscles are connected to the shoulder. If you don't use the shoulder as much, those muscles will get tightened up. So one leading to another kind of thing. So in a nutshell from this point, generally speaking, she can manage fairly well. Will there be absolutely no flare-up? I cannot say that.[2]
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> . . .
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> I always stumble on that question because, in medicine, you cannot be that -- that -- comfortably say that it will or won't happen especially with the nature of this myofascial pain. It can come and go. And as I said earlier most of the time they should be able to handle the pain. Occasionally it might happen and at that time, as I mentioned earlier, I would be happy to see her if you need anything more.[3]

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[2] Sankoorikal Depo. at 9-10.

[3] *Id.* at 20.

Dr. Sankoorikal indicated claimant's condition would have to change for him to have further treatment recommendations for her. He also indicated it was "quite a possibility"[4] claimant may need one or two trigger point injections in the future depending upon the severity of her symptoms. The doctor testified, "As I told you earlier, it's quite possible that she could manage all this by herself. But I cannot 100 percent guarantee this will never happen again."[5]

At the request of her counsel, claimant was evaluated by Dr. Edward J. Prostic on May 4, 2015. Dr. Prostic diagnosed claimant with a cervical sprain/strain. The doctor testified claimant had decreased range of motion, especially in extension and rotation and in the left tilt and a complaint of pain at the extremes of the motions of the neck. He indicated claimant's testimony that she has pain when she turns her neck was consistent with his findings. Dr. Prostic acknowledged claimant did not complain of tenderness and he did not detect any muscle spasms.

Dr. Prostic found mild crepitus in the left shoulder, an ache at the impinging position and moderate weakness in all directions. He noted claimant underwent rotator cuff repair and she had a small osteophyte of the acromion and joint space narrowing of the glenohumeral joint.

Based on the *Guides*, Dr. Prostic opined claimant had a 25 percent left upper extremity functional impairment. He explained that 12 percent was for loss of range of motion, which included 5 percent for loss of flexion, 5 percent for loss of abduction, 1 percent for loss of extension and 1 percent for loss of internal rotation. The rest of the 25 percent impairment was for weakness. Dr. Prostic indicated the *Guides* does not provide for a certain percent of impairment for arthroscopic surgery or residual pain. The doctor indicated the *Guides* does not have a good chart for weakness. Dr. Prostic testified there are two ways to rate weakness in the *Guides*, and neither is "wonderful":[6] (1) using the section of the *Guides* for nerve injuries to the upper extremity containing ratings for loss of sensation and loss of motor power, or (2) using Table 34 of the *Guides*. The doctor acknowledged using neither of those methods to rate claimant's weakness.

Dr. Prostic assigned a 5 percent whole person functional impairment for claimant's cervical spine and indicated she was in DRE Cervicothoracic Category II. He indicated claimant's ratings combined for a 19 percent whole person functional impairment.

According to Dr. Prostic, claimant will likely need future medical treatment for her left shoulder and neck. For claimant's neck, she would likely need conservative treatment

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[4] *Id.* at 18.

[5] *Id.* at 19.

[6] Prostic Depo. at 17.

with continued pain medicines, intermittent heat or ice and massage and if she is more symptomatic, physical therapy. The doctor agreed claimant was taking only over-the-counter medications and needs no medical supervision for heat, ice and massage. Dr. Prostic recommended injections only if claimant developed radiculopathy.

For claimant's left shoulder, the doctor testified she needed continued pain medication and may need a total shoulder replacement arthroplasty. He testified an indicator for replacement arthroplasty would be unbearable pain or pseudoparalysis. He estimated the probability of arthroplasty at 25 to 50 percent. Dr. Prostic testified that all his opinions were within a reasonable degree of medical certainty.

PRINCIPLES OF LAW AND ANALYSIS

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.[7] "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act."[8]

K.S.A. 2011 Supp. 44-510h(e) provides:

> It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

The testimony of Drs. Sankoorikal and Prostic convinces the Board they relied on the *Guides* when rendering their functional impairment opinions. Both physicians testified

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[7] K.S.A. 2011 Supp. 44-501b(c).

[8] K.S.A. 2011 Supp. 44-508(h).

they followed the *Guides*. Dr. Sankoorikal did not reference a specific table, chapter or page number in the *Guides*. While it is preferable when a testifying medical expert cites specific tables, chapters and pages of the *Guides*, failure to do so does not mean the opinion is not credible.

The ALJ found Dr. Prostic's 19 percent functional impairment opinion more credible than Dr. Sankoorikal's 14 percent opinion. The Board agrees. Dr. Sankoorikal assigned a blanket 10 percent rating for claimant's left shoulder arthroscopic surgery and residual pain. As noted by Dr. Prostic, there is no chart or area of the *Guides* that provides for a certain rating percentage for shoulder arthroscopy or residual pain.

Dr. Prostic noted specific percentages for claimant's loss of range of motion, which included loss of flexion, abduction, extension and internal rotation. The resulting 12 percent loss of range of motion rating of Dr. Prostic is more precise than Dr. Sankoorikal's blanket 9 percent for loss of range of motion.

Claimant testified she has left shoulder weakness, yet Dr. Sankoorikal did not rate said weakness. Conversely, Dr. Prostic took into consideration claimant's left shoulder weakness. He adequately explained why he did not use certain parts of the *Guides* to rate claimant's left shoulder weakness. That also calls into question the left shoulder rating of Dr. Sankoorikal.

Dr. Prostic opined claimant met the criteria for DRE Cervicothoracic Category II. Claimant received cervical spine injections. Claimant testified she still has neck pain, particularly when she turns to the right and looks up. Yet, Dr. Sankoorikal indicated claimant had no loss of range of motion in her neck. Those factors convince the Board that Dr. Prostic's 5 percent rating for claimant's cervical spine is more accurate than Dr. Sankoorikal's 3 percent rating for myofascial pain involving the left upper trapezius.

Whether an injured worker will need future medical treatment is always speculative. A physician must evaluate claimant's current condition and attempt to look into the future. Factors include a particular patient's ability to tolerate pain, the patient's future physical activities and lifestyle, whether the condition is progressive and the type of medical treatment available and its effectiveness. The physician also applies his or her past experience with other patients who have the same medical condition.

In this instance, the Board is convinced claimant proved with medical evidence that more probably true than not she will need future medical treatment. Dr. Sankoorikal indicated it was "quite a possibility" claimant may need one or two trigger point injections depending on the severity of her symptoms. Dr. Prostic opined claimant will need future medical treatment for her neck and left shoulder and outlined the future medical treatment claimant may need.

Respondent asserts claimant's need for future medical treatment is predicated upon her symptoms and pain increasing and that may never happen. Under that theory, only injured workers who, after reaching maximum medical improvement, continue to receive ongoing medical care prescribed by a licensed medical provider would be entitled to receive future medical treatment.

Under the Kansas Workers Compensation Act, claimant has two hurdles in her path to obtaining future medical treatment. Stated another way, the Act gives respondent two chances to avoid providing claimant future medical benefits. As noted above, under K.S.A. 2011 Supp. 44-510h(e), claimant must first prove that it is more probably true than not that additional medical treatment will be necessary after she reaches maximum medical improvement. If claimant files a post-award medical proceeding under K.S.A. 2011 Supp. 44-510k, she is entitled to future medical benefits only if the ALJ finds that it is more probably true than not that the injury which was the subject of the underlying award is the prevailing factor in the need for further medical care and that the care requested is necessary to cure or relieve the effects of such injury. Thus, if claimant applies for future medical benefits pursuant to K.S.A. 2011 Supp. 44-510k, respondent will have an opportunity to present evidence as to why such medical treatment should not be ordered.

CONCLUSION

1. Claimant has a 19 percent whole person functional impairment.

2. Claimant is entitled to future medical benefits, including pain management.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.[9] Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board affirms the February 3, 2016, Award entered by ALJ Sanders.

IT IS SO ORDERED.

[9] K.S.A. 2015 Supp. 44-555c(j).

Dated this ____ day of July, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Honorable Rebecca A. Sanders, Administrative Law Judge